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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/168852

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 20, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a telephonic hearing was held on October 15, 2015.

The issue for determination is whether the agency correctly denied petitioner's MA application for (BadgerCare Plus (BCP)) effective September 1, 2015 due to excess income.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Rhonda Kramer, Lead ES  
Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner lives at home with his parents and sister. His parents file their taxes as married, filing jointly, and claim their two children as dependents.
3. On September 8, 2015 petitioner applied for BCP.

4. On September 11, 2015, the agency issued written notice to the petitioner advising him that it denied his application. The basis for discontinuance was excess income.
5. The petitioner's monthly household countable income is \$9732.36.

### DISCUSSION

BCP is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The program has nonfinancial eligibility standards and financial eligibility standards. The issue in this case relates to the financial eligibility. Beginning February 1, 2014, BCP eligibility determinations use Modified Adjusted Gross Income (MAGI) rules. MAGI rules are based on the concept of an individual's tax household, not necessarily on the physical household or family relationships. See *BadgerCare Plus Eligibility Handbook (BCPEH)*, §2.3.2, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

MAGI groups are based on a "target" individual. Each person who can become eligible for BCP on the application will be a target during the eligibility determination for a case. When the individual seeking BCP eligibility is a tax filer and is not being claimed as a dependent by anyone else, then the individual's MAGI group consists of the tax filer, the tax filer's spouse, and any dependents the tax filer is claiming. Additionally, a tax dependent's household will usually be the same as his or her tax filer's household, even if the tax dependent is also a tax filer. *Id.* The agency determined that petitioner's MAGI group included his parents and sister, and therefore their income was included in the eligibility determination. Petitioner did not dispute these facts about their tax filing status or income amounts.

The agency calculated the monthly income for this household as \$9732.36. Because this is over the limit of \$2020.83 for a group size of 4, the agency denied the application.

From gross income the agency is allowed to subtract only those income tax deductions listed on lines #23 through #35 of the federal 1040 tax return, subject to modifications listed at 42 C.F.R. §435.603(e). The only allowable deductions are stated as follows:

Under MAGI rules, pre-tax deductions will be allowed if the payments are taken out of the individual's paycheck on a pre-tax basis. Examples include but are not limited to:

1. Health Insurance premium payments, including pre-tax premium payments for medical, dental or vision plans
2. Health Savings Account (including flexible spending accounts) contributions
3. Retirement contributions
4. Parking & Transit costs
5. Child Care Savings Account contributions
6. Group Life Insurance premium payments

*BCPEH*, §16.3.2.

And:

Under MAGI rules, monthly expenses related to the following tax deductions from page one of the IRS Form 1040 will be allowed as income deductions for the current year, even if the individual does not plan on filing taxes. If the expense is not incurred on a monthly basis, it will be prorated and counted as a monthly expense.

Most of these deductions are not common, and they do not include itemized tax deductions, like charitable contributions or mortgage interest.

In addition, a few deductions have caps, as noted in detail below. If an individual reports and verifies a monthly expense that is more than the monthly cap, the deduction will be the amount of the cap.

1. **Student Loan Interest**

Interest on a loan taken to pay for school expenses for the following persons at the time the loan was taken out:

- His or her spouse;
- His or her child under age 19; or
- His or her child under age 24 who was a student, lived with the individual for more than half a year, did not provide more than half of his or her own support for that year, and did not earn more than \$3,900 during that year.

Do not count interest on a loan used for anything besides paying for education or if a relative or employer gave the loan.

This deduction is capped at a monthly amount of \$208.

2. **Higher Education Expenses** Includes tuition and amounts paid for books or fees, but only if those amounts are required to be paid to the institution as a condition of enrollment or attendance. This deduction may not be claimed for expenses that were paid with tax-free educational assistance. Grants and scholarships used for tuition and fees are generally non-taxable, therefore this deduction cannot be claimed for the portion of tuition and fees that were paid for with grants and scholarships. This is capped at a monthly amount of \$333.
3. **Self-employment Tax Deduction** Applies to individuals who are self-employed, who owe self-employment tax, and who are able to deduct a portion of the self-employment tax they pay. Only deduct the portion that the person can deduct on their tax return (as calculated on Schedule SE), not the entire amount of self-employment tax that is paid.
4. **Spousal Support, Alimony or Maintenance** The amount paid for court ordered spousal support, alimony or maintenance or payments under Section 71 for a current or prior spouse as a result of a legal separation or divorce. Do not deduct more than the court ordered amount. Do not allow any deduction if the court order designates the payments as being non-taxable.
5. **Teachers' Tax-Deductible Expenses** Applies to K-12 teachers who have up to \$250 in out-of-pocket work expenses (expenses not paid for by the employer). This is capped at a monthly amount of \$21.
6. **Self-employed SEP, Simple or Qualified Plan Contributions**  
Examples of these plans include:
- Simplified Employee Pension (SEP) Plan
  - Savings Incentive Match Plan For Employees (SIMPLE)
  - Qualified Plan Contributions
7. **Penalties for Early Withdrawal of Funds** Penalties to a bank or financial institution for withdrawing funds early from a savings account where money must be left in the account

for a fixed period of time, such as a time saving account, certificate of deposit (CD) or an annuity.

8. **Performing Artists Tax-deductible Expenses** Applies to performing artists who have out-of-pocket business expenses not paid by the employer and meet the following criteria:
  - Worked for at least two employers who each paid at least \$200;
  - Did not earn more than \$16,000 for his or her work in the current year; and
  - Out-of-pocket expenses were more than 10% of his or her earnings.
9. **Military Reserve Members' Tax-deductible Expenses** Applies to travel expenses for members of the Armed Forces Reserve who travel more than 100 miles away from home to perform work for the Armed Forces Reserve.
10. **Out-of-pocket Costs for a Job-related Move** Applies to individuals who paid out-of-pocket expenses for a job-related move and meets the following criteria:
  - The move must be for a job-related reason, such as starting a new job, and
  - The new job must be at least 50 miles farther from the individual's old home than the old home was from the individual's old job or must be at least 50 miles from the old home if the individual did not have a job before.
11. **Loss from Sale of Business Property** Applies to self-employed individuals that had a loss from the sale or exchange of property that they owned for their business.
12. **Individual Retirement Account (IRA) Contributions** Applies to individuals who had income from a job and made contributions to an individual retirement account (IRA). Also applies to self-employed individuals who made contributions to an IRA they set up themselves.
13. **Fee-based Official Tax-deductible Expenses** Applies to individuals who are fee-based officials and have out-of-pocket business expenses. Examples of fee-based officials include chaplains, county commissioners, judges, justices of the peace, sheriffs, constables, registrars of deeds or building inspectors.
14. **Domestic Production Activities Deduction** Applies to self-employed individuals who led the production of things like property, electricity, natural gas, or potable water, as long as these things were produced in the United States. This also applies to individuals who invented or created software, recordings, or films in the United States.

**Note:** This deduction is not common.

15. **Allowable Write-in Expenses** These deductions include:
  - Contributions to Archer MSAs
  - Deductions attributable to rents and royalties
  - Certain deductions of life tenants and income beneficiaries of property
  - Jury duty pay given to the employer because the juror was paid a salary during duty
  - Reforestation expenses
  - Costs involving discrimination suits
  - Attorney fees relating to awards to whistleblowers
  - Contributions to section 501(c)(18)(D) pension plans.
  - Contributions by certain chaplains to section 403(b) plans

BCPEH, §16.3.3.

No evidence suggested petitioner was eligible for any deduction.

Based on the information before me, I must find that the agency correctly calculated the petitioner's household income, which is over the BCP eligibility limit. While I understand this may seem unfair, I cannot deviate from the income requirements established under the law. The Division of Hearings & Appeals' administrative law judges lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

Petitioner may follow up with an application in the Federal Marketplace, or if he is determined disabled under Social Security standards, he may apply for Medicaid as he would be nonfinancially eligible. See *Medicaid Eligibility Handbook* at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

### **CONCLUSIONS OF LAW**

The agency correctly denied petitioner's MA application for BCP effective September 1, 2015 due to excess income.

**THEREFORE, it is**

**ORDERED**

The petition for review herein is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

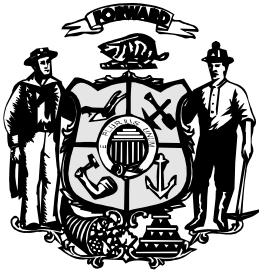
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 19th day of November, 2015

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 19, 2015.

Racine County Department of Human Services  
Division of Health Care Access and Accountability